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FILED / ENDORSED
AUG 10 2006
By Terri West, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

AMERICAN INSURANCE ASSOCIATION, ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES, and PERSONAL INSURANCE FEDERATION OF CALIFORNIA, Plaintiffs, v. JOHN GARAMENDI, Insurance Commissioner of the State of California, Defendant.	CASE NO. 06 AS 03053 **ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** Date: August 10, 2006 Time: 2:00 PM Dept: 53 Trial Date: None Action Filed: July 18, 2006
CONSUMERS UNION OF THE UNITED STATES, INC., et al., Intervenors.	

The plaintiffs' motion for preliminary injunction was called for hearing on August 10, 2006, in department 53 of the above-entitled court, the Honorable Loren E. McMaster presiding. Appearances of counsel for the plaintiffs, defendant, and intervenors were stated on the record at the hearing. The court issued the attached tentative ruling the day before the hearing.

After considering the written and oral arguments submitted by the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED that the attached tentative ruling is adopted as the final ruling of the court, and the plaintiffs' motion for preliminary injunction is therefore denied.

AUG 10 2006

Dated: August ___, 2006

The Honorable Loren E. McMaster
Judge of the Superior Court

The implementation of the regulations at issue here are ordered stayed until 9:00 am August 17, 2006, to permit plaintiffs to file a writ Petition in the Court of Appeal

LOREN E. McMASTER

which requires service on "the clerk or secretary or board of the local public entity" pursuant to the procedure set forth in CCP 1005(b). Gov Code 946.6(d).

The only persons listed on the proof of service are a claims administrator (presumably for the County) , the School District's legal department, and a District Administrator of the Park District. This is not proper service under the government code.

The minute order is effective immediately. No formal order pursuant to CRC Rule 391 or further notice is required.

Item 16 **06AS03053 AMERICAN INS. ASSOC., ET AL VS. JOHN GARAMENDI**

Nature of Proceeding: Preliminary Injunction

Filed By: Golub, Larry M.

Case No. 06AS03036 has been transferred to Department 53 for this hearing only so the cases can be heard by a single judge, since the motions are virtually identical. The parties are directed to seek consolidation of the cases for all purposes in Department 47.

Plaintiffs' Motions for Preliminary Injunction are denied.

Plaintiffs are insurance trade organizations (Case No. 06AS03053) and a membership organization of county Farm Bureaus and their representative members (Case No. 06AS03036) seeking to enjoin Insurance Commissioner John Garamendi from putting into effect amendments to sections 2632.5, 2632.8, and 2632.11 of Title 10 of the California Code of Regulations. The Amendments deal with the weight to be given to automobile rating factors in an insurer's rating plan. The Amendments go into effect August 13, 2006 and insurance companies must submit their new class rating plans by August 14, 2006. Plaintiffs contend that the Amendments are invalid and illegal because they directly conflict with Cal. Ins. Code section 1861.02(a) (Prop. 103), that the auto insurance industry as a whole will suffer irreparable harm if they are required to take action to comply with the Amendments, and the farm bureau members and other rural residents will see arbitrary increases in their insurance premiums.

The Court denies Plaintiffs' request for preliminary injunctive relief as they have not met their burden to establish they are likely to prevail on the merits of their claim that the Amendments are invalid and illegal. Moreover, they have not established irreparable harm.

On November 8, 1998 California voters approved Proposition 103. Proposition 103 (Insurance Code section 1861.02(a)), requires that rates and premiums be based on driving safety record, annual mileage driven, and years of driving experience, in that order. These "mandatory factors" must be considered in determining premiums. Insurance companies may also base their rates on "optional factors" that have been identifed by the Commissioner. There are currently 16 optional factors. The optional factors include two "territorial" or "zip code" factors, which are "relative claims frequency" and "relative claims severity." Proposition 103 demands that the optional factors must receive less weight than the least important "mandatory factor." Ins.

Code section 1861.02(a) The term "decreasing order of importance" in the statute means that optional factors are to have less weight than any mandatory factor. *Spanish Speaking Citizens' Foundation, Inc. v Low* (2000) 85 Cal.App.4th 1179, 1221.

In 1996 former Commissioner Quackenbush adopted the current regulations that were challenged in *Spanish Speaking Citizens* and upheld by the appellate court. The current regulations to which the Amendments apply use the "average weight" method that permit insurers to combine all of the optional factors and average their weight. Thus, the current regulations allow one or more optional factors, such as "claims severity" and "claims frequency" to have **more** weight than any of the mandatory factors. This result is expressly prohibited by Insurance Code section 1861.02(a) and Proposition 103. The Amendments change the weighting requirement to the "individual weight" method which meets the express requirement of Section 1861.02(a) that no optional factor has more weight than any mandatory factor.

On June 25, 2003 Commissioner Garamendi granted the petition for a regulatory proceeding to amend Regulation section 2632.8. After two and one half years of public hearings and workshops, on December 23, 2005 the Department issued a Notice of Proposed Action and Notice of Public Hearing and Initial Statement of Reasons for proposing the Amendments. Public proceedings at which written objections and other testimony was heard took place in February and March of 2006. By Notice dated April 26, 2006, the Department and Commissioner proposed additional revisions to the regulations. Plaintiffs contend the public was not given a sufficient opportunity to participate in these additional revisions. On June 5, 2006 the Commissioner submitted the Amendments to the Office of Administrative Law ("OAL") together with the administrative record prepared from the above proceedings. On July 14, 2006 the OAL approved the Amendments.

The Comissioner's authority to promulgate regulations is governed by Government Code section 11342.2 which provides "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." The Commissioner's decisions implementing the initiative are entitled to great deference from the courts. "While final responsibility for the interpretation of the law rests with the courts, the construction of a statute by officials charged with its administration... is entitled to great weight." *Spanish Speaking Citizens*, page 1214-1215. Whether a rate regulation is necessary and proper for the implementation of Proposition 103 is scrutinized for arbitrariness and/or capriciousness. *20th Century Ins. Co. v Garamendi* (1994) 8 Cal.4th 216, 271.

This court cannot re-weigh the Commissioner's findings based on the extensive administrative proceedings which comprise 32 volumes and are accompanied by a 200 page analysis of and response to each party's testimony on the policy and technical issues (AR 424-632). While such weighing might be proper in a administrative mandamus proceeding under CCP 1094.5 it is not proper in reviewing regulations rendered by an agency in its quasi-legislative capacity. *Pitts v Perluss* (1962) 58 Cal.2nd 824, 832-835.

The fact that different Commisioners have taken inconsistent positions on the interpretation of the statute does not change the standard of deference, given the conflicting demands of the statute, as recognized by the court in *Spanish Speaking Citizens*. As a result, even though the court in that case recognized that regulations such as those in the Amendments "may be a permissible interpretation of Proposition

103" *Spanish Speaking* p.1239, it deferred to Commissioner Quakenbush's "average weight" regulations under the deference standard. Thus, rather than holding that the only lawful rating method is the "average weight" method, the opinion in *Spanish Speaking Citizens* emphasizes the degree to which courts should defer to the expertise of the Commissioner in his assessment of what type of rating method among various alternatives will best promote the purpose of the statute.

The court in *Spanish Speaking Citizens*, stated that the method set forth in the Amendments was a "lawful choice among imperfect options." That court, giving deference to the Commissioner's and the Department of Insurance's technical expertise which involves complicated actuarial computations, determined that plaintiffs in that case were not entitled to a CCP 1085 writ of mandate compelling the Commissioner to adopt an "individual weight" method.

The unrefuted evidence in the administrative record before the court in *Spanish Speaking Citizens* was that territory, an optional factor, was more determinant of risk than any other single factor. (*Spanish Speaking Citizens*, page 1237.) Thus, the *Spanish Speaking Citizens* court found a conflict in the statute. On the one hand, Proposition 103 mandated that territory could not be given more weight than the mandatory factors (which the evidence there showed were less indicative of risk of loss) and on the other hand the statute required that rates not be "arbitrary." The court in *Spanish Speaking Citizens* found the Quackenbush regulations lawful even though they violated the statutory requirement that the mandatory factors be given more weight than any optional factor. The court reasoned that the current regulations reduced arbitrary insurance rates resulting from the requirement that territory be given less weight than the mandatory factors even though territory was most indicative of risk of loss. Thus, the court found that the regulations furthered the requirement of Prop. 103 that insurance rates would not be arbitrary. (*Spanish Speaking Citizens*, pages 1237-1238.)

Plaintiffs here contend that the Amendments will result in arbitrary rates that are unrelated to the cost of providing insurance. Plaintiffs cite to statistical predictions from studies performed by actuarial experts, that the new regulations will arbitrarily increase the premiums of rural drivers and decrease the premiums of urban drivers, essentially contending that rural drivers with good driving records will be subsidizing the premiums of urban drivers with worse driving records. These calculations were premised on the assumption that the regulations require either full tempering, full pumping or pumping and tempering in some combination. (See Appendix A, page 1, Downer testimony; Appendix A, page 5, Declaration of Lew, Ex. G; Appendix A, page 6, Written Testimony of California Farm Bureau Federation; Appendix A, page 6, Comments and Objections of Farmers Insurance Exchange.) The plaintiffs also contend their evidence shows that zip code is the dominant factor in the cost of insurance. (Declaration of Lew, Comments of State Farm Actuary Jay Hieb)

Unlike in *Spanish Speaking Citizens,'* the evidence presented by Plaintiffs is not unrefuted. The Commissioner has based his determination in part on studies that reveal that zip code is not the greatest indicator of risk of loss. (AR 470) Based on substantial evidence in this admistrative record, the Commissioner has determined that the current regulations upheld in *Spanish Speaking Citizens* have not over time really avoided arbitrary rates and premiums. Drivers with the same driving records and other similar characteristics paid different premiums simply because they lived in different neighborhoods. (AR 484) Moreover, the Commissioner found that insurers

had been using a ZIP-code based system that was not related to the cost of providing insurance:

"While costs may vary from company to company, the Comissioner has observed substantial evidence of variations in premiums from company to company which cannot be explained by cost. See, e.g. Response to Common Comment 1.3. Indeed, as Consumer's Union correctly points out, the differentials in territory relativities between adjacent zip-code pairs for some companies do not closely follow the patter[n] s of the industry wide pure premium data. (See RH03029826 Rulemaking File Comments, Volume 7, Tab 5, page 39.)...Indeed, contrary to what the Spanish Speaking Court appears to have assumed, substantial evidence has demonstrated that rates under the existing regulations often do not correlate to the risk of loss . (AR 546, 498) See also e.g. AR 2352-2413, 2416-2432, 2533-2570, 5029-5103.)

Thus, based on the Commissioner's determination, the current regulations result in arbitrary rates as well as violate the express requirement of the statute that territory be given less weight than driving safety record, annual miles driven, and years of driving experience.

Plaintiffs' speculative fears of arbitrary rates arising from their experts' studies are undercut by the evidence submitted by Commissioner of an actual rating plan that has been submitted under the Amendments. Automobile Club of Southern California has already submitted their initial class rating plan before the August 14 deadline. According to the Declaration of Brandt Stevens, with the Policy Research Division of the Department of Insurance, the Auto Club completed a sequential analysis for their rating factors and the rating factor relativities. After aligning the factors as required by Section 2632.8, and matching premiums most closely to exposure to loss, the company's rate filing resulted in an overall 7% decrease in rates, and reduced premiums for 88% of the company's insureds. No more than 1.7% of its customers will experience a rate increase that exceeds 5%/ (Declaration of Stevens.) Contrary to the contentions of the plaintiffs, the rating plan did not require the "pumping" or "tempering" of the relative weight of a factor which the *Spanish Speaking Citizens* court held would result in arbitrary rates.

The motions for preliminary injunction are denied since Plaintiffs have not persuaded the Court that they have a reasonable likelihood of success on the merits. *14859 Moorpark Homeowner's Assoc. v VRT Corp.* (1998) 63 Cal.App.4th 1396, 1409. The Court, in its independent judgment, giving deference to the Commissioner's technical expertise and his interpretation of the evidence in the record, finds that Plaintiffs have not established that they are likely to prevail on their claim that the Amendments "directly conflict" with Proposition 103. Rather, the Amendments squarely track the language of Insurance Code section 1861.02(a) specifying the order of importance of the factors. Nor have plaintiffs established that they would suffer irreparable harm by the implementation of the regulations. The evidence upon which the claims of arbitrariness and irreparable harm are based is somewhat speculative and based on conjecture and are contradicted by the successful initial filing by the Auto Club.

Plaintiffs have not established that the time frame required for filing of the class rating plans or the procedure employed in the April 26 revisions warrant injunctive relief. As to the timing issue, the insurers have been aware of the new regulations since the middle of June. The Interinsurance Exchange of the Automobile Club of

Southern California has already submitted its initial class rating plan well in advance of the dead-line, thereby refuting Plaintiffs claims of hardship regarding the short time frame. As to the issue of legality of the Revision process, the the Court finds that the two revisions complained of were sufficiently related to the original versions of the Amendments since a "reasonable member if the directly affected public could have determined from the notice that these changes to the regulation could have resulted." (Cal. Code Regs., tit. 1, section 42)

Both Plaintiffs' and Defendant's Requests for Judicial Notice are granted.

Plaintiff's Reply to the Intervenor's opposition was filed on August 9, 2006 and was not considered by the court. Local Rule 3.03(C).

Defendant to prepare a formal order pursuant to CRC, Rule 391.

Item 17 **06AM02215 GCFS, INC VS. INGRID C. GALEMA**

Nature of Proceeding: Motion For Judgment On Pleading

Filed By: Wilkes, Gilbert

Plaintiff's Motion for Judgment on the Pleadings on the ground the Answer does not state a defense is unopposed and is granted. Defendant states that she cannot afford to pay the debt but this is not a defense. Defendant may make a motion to make payment of judgment in installments under CCP 582.5.

Plaintiff to prepare the formal order pursuant to CRC, Rule 391.

Item 18 **06AM02355 DRIVE FINANCIAL SERVICES, LP. VS. JOSEPH C. JONES**

Nature of Proceeding: Writ of Possession Hearing

Filed By: Nam, Dina Y.

Application for Writ of Possession is dropped from calendar without prejudice since there is no proof of jurisdictional service or service of the application and supporting documents in the file. CCP 512.030.

Item 19 **06AM02355 DRIVE FINANCIAL SERVICES, LP. VS. JOSEPH C. JONES**

Nature of Proceeding: Motion To Quash Writ Of Possesion

Filed By: Jones, Joseph C.

Dropped from calendar as moot.

Defendant in pro per has filed an application for hearing on motion to quash ex parte writ of possession. No supporting documents have been filed and there has been no ex parte writ of possession issued.